

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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FRANCIS HORN, an individual,
Plaintiff,

NO. CIV. S 05-0814 MCE KJM

v.

MEMORANDUM AND ORDER

STATE OF CALIFORNIA;
CALIFORNIA DEPARTMENT OF
CORRECTIONS; ASSOC. WARDEN
K.M. CHASTAIN, individually;
CHIEF DEPUTY WARDEN STILES,
individually; CORRECTIONAL
OFFICE J. GRADY, individually;
MTA W. VAN SANDT,
individually; RN T. MEEKS,
individually; RN G. LAUCIRICA,
individually; RN J. MARSTON,
individually; FRANK CHRISTIAN,
individually, and DOES 1
through 250, inclusive,

Defendant.

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By Memorandum and Order signed August 10, 2005, this Court
granted Defendants' Motion to Dismiss, in part, and permitted

1 Plaintiff Francis Horn ("Plaintiff") to amend her complaint.
2 Plaintiff thereafter filed her Second Amended Complaint ("SAC")
3 on August 30, 2005. Defendants¹ now again move to dismiss
4 portions of that amended pleading for failure to state a claim
5 upon which relief can be granted pursuant to Federal Rule of
6 Civil Procedure² 12(b)(6).

7
8 **BACKGROUND**³
9

10 On or about January 11, 2003, Plaintiff's son, Gilbert M.
11 Salazar ("Salazar"), died while an inmate at the California State
12 Prison in Sacramento. Salazar's death was ruled a suicide by the
13 California Department of Corrections.

14 Plaintiff alleges that Salazar was in fact beaten to death
15 by his cellmate, Defendant Christian. According to Plaintiff,
16 Defendants Chastain and Stiles, as members of the prison
17 classification committee, violated applicable standards and
18 regulations by deciding to house Salazar with Christian given
19

20 ¹In addition to the State of California and California
21 Department of Corrections (hereinafter referred to collectively
22 as "State" or "State of California"), individual defendants
23 include Associate Warden K.M. Chastain ("Chastain"), Chief Deputy
24 Warden Stiles ("Stiles"), Correctional Officer J. Grady
25 ("Grady"), MTA W. Van Sandt ("Van Sandt"), RN T. Meeks ("Meeks"),
RN G. Laucirica ("Laucirica"), RN J. Marston ("Marston"), and
inmate Frank Christian ("Christian"). This motion is brought on
behalf of all defendants except for Laucirica and Christian.
Unless noted to the contrary, the term "Defendants" will refer to
the moving defendants.

26 ²All further references to "Rule" or "Rules" are to the
27 Federal Rules of Civil Procedure unless otherwise specified.

28 ³The facts as stated in this section are taken directly from
Plaintiff's complaint.

1 their knowledge of prior altercations and violence involving the
2 two men. Plaintiff goes on to allege that Salazar actually
3 complained about the mistreatment he received from Christian,
4 which purportedly included both mental and physical abuse.
5 Plaintiff claims that those complaints, as well as Salazar's
6 requests that he accordingly be transferred, were ignored by
7 Defendants.

8 Plaintiff's complaint states that Defendant Christian, at
9 some unspecified time before Salazar's death, was seen hitting
10 Salazar with such force that his "head was bouncing off the
11 concrete." (SAC, ¶ 29). Salazar was subsequently discovered
12 lying in a pool of blood in his cell. Although Plaintiff admits
13 that correctional staff, including Defendant Grady, attempted as
14 assist Salazar upon that discovery, she claims that failure of
15 staff to carry personal alarms somehow delayed medical attention
16 to Salazar and led to his death. Id. In addition, Plaintiff
17 states that certain unidentified personnel working in the prison
18 control tower were inattentive as a result of "playing dominoes
19 or some other recreational activity". She alleges that because
20 of that activity those personnel also did not respond quickly
21 enough to the emergency posed by Salazar's discovery. Finally,
22 Plaintiff maintains that to compound matters further, "medical
23 staff [including defendants Van Sandt, Meeks and Marston] did not
24 provide adequate or proper medical treatment to Salazar when they
25 did receive notice of [his] emergency situation" and that Salazar
26 died as a result. Id. at ¶ 30. Plaintiff does not offer any
27 further details as to how medical care given to Salazar, after
28 his discovery lying in a pool of blood, was somehow below the

1 standard of care. In fact, Plaintiff claims elsewhere in her
2 complaint that Defendant Christian killed Salazar, then "made it
3 look like suicide by cutting Salazar's arm." (SAC, ¶ 28).

4 Plaintiff finally alleges that the remaining defendants also
5 "engaged in a fraudulent cover-up to rule Salazar's death as a
6 suicide when they, and each of them, knew that he had been killed
7 by Defendant Christian." Id.

8
9 **STANDARD**

10
11 On a motion to dismiss for failure to state a claim under
12 Rule 12(b)(6), all allegations of material fact must be accepted
13 as true and construed in the light most favorable to the
14 nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336,
15 337-38 (9th Cir. 1996). A complaint will not be dismissed for
16 failure to state a claim "'unless it appears beyond doubt that
17 plaintiff can prove no set of facts in support of her claim that
18 would entitle her to relief.'" Yamaguchi v. Dep't of the Air
19 Force, 109 F.3d 1475, 1480 (9th Cir. 1997) (quoting Lewis v. Tel.
20 Employees Credit Union, 87 F.3d 1537, 1545 (9th Cir. 1996).

21 If a motion to dismiss is granted for failure to state a
22 viable claim, the Court must then determine whether to grant
23 leave to amend. Generally, leave to amend should be denied only
24 if it is clear that the deficiencies of the complaint cannot be
25 cured by amendment. Broughton v. Cutter Labs., 622 F.2d 458, 460
26 (9th Cir. 1980).

27 //

ANALYSIS

Defendants' initial motion to dismiss focused primarily on issues pertaining to Plaintiff's standing to bring the claims asserted in her complaint. With respect to the substance of the claims themselves, the only deficiency identified through Defendants' initial motion, and repeated in the motion now before the Court, concerns the adequacy of Plaintiff's claim for intentional infliction of emotional distress. The additional grounds for dismissal now cited by Defendants concern the viability, in whole or in part, of Plaintiff's First Cause of Action, for Medical Malpractice, the Second Cause of Action, for Failure to Furnish Medical Care, and the Third Cause of Action, for Failure to Provide Adequate Medical Personnel Facilities. In addition, Defendant State of California claims that the Fourth and Twelfth Causes of Action, for failure to discharge certain mandatory duties, fail because Plaintiff does not specifically identify the statutory bases for such duties. Defendant State also claims that it is immune from liability for wrongful death as alleged in the Tenth Cause of action. Finally, Defendants contend that Plaintiff cannot state any claim for abuse of process (as alleged in the Eleventh Cause of Action) under the circumstances of this case.

Each of these alleged deficiencies will now be addressed.

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1 **1. Medical Malpractice.**

2 Defendants claim that the First Cause of Action fails to the
3 extent that it asserts a claim for medical malpractice against
4 all defendants. While Defendants are correct in asserting such a
5 claim cannot be pursued against non-medical defendants, the SAC
6 in fact makes it clear that the First Cause of Action is directed
7 only to "all Health Care Defendants". Because the SAC makes it
8 clear that only Defendants Van Sandt, Meeks, and Marston so
9 qualify (as either a medical technician or registered nurses, see
10 ¶¶ 10, 11 and 13, respectively), Defendants' argument concerning
11 the First Cause of Action is simply incorrect. The Motion to
12 Dismiss as to that claim is hence denied.

13
14 **2. Failure to Furnish Medical Care.**

15 Plaintiff's Second Cause of Action, for Failure to Furnish
16 Medical Care, is based on violation of California Government Code
17 § 845.6, which states in pertinent part as follows:

18 "Neither a public entity nor a public employee is liable for
19 injury proximately caused by the failure of the employee to
20 furnish or obtain medical care for a prisoner in his
21 custody; but... a public employee, and the public entity
22 where the employee is acting within the scope of his
employment, is liable if the employee knows or has reason to
know that the prisoner is in need of immediate medical care
and he fails to take reasonable action to summon such
medical care..."

23 Consequently, to state a claim for violation of § 845.6,
24 Plaintiff must show that Defendants knew or had reason to know
25 that Salazar was in need of immediate medical care, but failed to
26 act reasonably in summoning such care. Unless Plaintiff can
27 demonstrate that Defendants' alleged inaction comes within this
28 limited exception to the general rule of non-liability, no viable

1 claim under § 845.6 can be stated. See Watson v. State, 21 Cal.
2 App. 4th 836, 841-42 (1993).

3 Plaintiff's SAC fails to make factual allegations sufficient
4 in this regard. In fact, ¶ 29 states that upon discovering
5 Salazar lying in a pool of blood in his cell, Defendant Grady and
6 others entered the cell and attempted to assist him. There is no
7 allegation that medical care was delayed at that point.

8 Plaintiff nonetheless appears to claim that Defendants' failure
9 to reasonably summon care is rooted in their failure to carry
10 personal alarms, and to being distracted by virtue of being
11 engaged in other activities. Those alleged failures, however,
12 even if true, do not translate into an awareness of the need for
13 immediate medical care, as required by the statute. There is no
14 allegation that Defendants were aware of the need for such
15 immediate care until Salazar's body was actually discovered, and
16 there is nothing in the SAC as presently constituted to suggest
17 that care was not provided at that time. Consequently Plaintiff
18 has not pled a viable claim for violation of § 845.6, and
19 Defendants' Motion to Dismiss the Second Cause of Action will be
20 granted.

21
22 **3. Failure to Provide Medical Facilities and Equipment.**

23 For her Third Cause of Action, Plaintiff pleads a violation
24 of California Government Code § 855:

25 (a) A public entity that operates or maintains any medical
26 facility that is subject to regulation by the State
27 Department of Health Services, Social Services,
28 Developmental Services, or Mental Health is liable for
injury proximately caused by the failure of the public
entity to provide adequate or sufficient equipment,
personnel or facilities required by any statute or any

1 regulation of the State Department of Health Services,
2 Social Services, Developmental Services, or Mental Health
3 prescribing minimum standards for equipment, personnel or
4 facilities, unless the public entity establishes that it
exercised reasonable diligence to comply with the applicable
statute or regulation.

5 The statute hence requires, as a prerequisite for liability, that
6 a public entity fail to provide medical equipment, facilities or
7 personnel *required* by specific statute or regulation.

8 Plaintiff's SAC, however, states only in the most general of
9 terms that the public entity defendants "failed to provide
10 adequate or proper medical treatment to Salazar when they did
11 receive notice of [his] emergency situation." (SAC, ¶ 30).

12 There is no reference to any specific equipment, facilities or
13 personnel required by statute or regulation, as mandated by §
14 855. The SAC complaint does not specify what statutes and/or
15 regulations are implicated. Without additional facts in this
16 regard, the Third Cause of Action fails and is accordingly
17 subject to dismissal on that basis.⁴

18 19 **4. Failure to Specify Alleged Mandatory Duties.**

20 Both the Fourth and Twelfth Causes of Action are premised on
21 Defendants' alleged failure to discharge mandatory duties under
22 California Government Code § 815.6. That section provides:

23 Where a public entity is under a mandatory duty imposed by
24 an enactment that is designed to protect against the risk of

25 ⁴While Defendants' Motion also seeks to dismiss all non-
26 public entity defendants as parties to this claim given § 855's
27 clear limitation to public entities, the heading to the Third
28 Cause of Action specifically limits the claim to "All Public
Entity Defendants". Hence there is no claim against the
individual defendants in the Third Cause of Action and the Motion
to Dismiss is not well taken in that regard.

1 a particular kind of injury, the public entity is liable for
2 an injury of that kind proximately caused by its failure to
3 discharge the duty unless the public entity establishes that
it exercised reasonable diligence to discharge the duty.

4 In order to state a claim under § 815.6, then, an
5 enactment must impose a mandatory, and not a discretionary duty.
6 The underlying enactment must also protect against the kind of
7 injury invoked as a basis for liability, and breach of the
8 mandatory duty set forth by the enactment in question has to be a
9 proximate cause of the injury suffered. See Walt Rankin &
10 Assoc., Inc. v. City of Murrieta, 84 Cal. App. 4th 605, 614
11 (2000).

12 Plaintiff here has failed to specify any enactment imposing
13 a mandatory duty on the State of California as the public entity
14 at issue. It is not sufficient to argue, as Plaintiff does, that
15 the SAC somehow "infers" that the requisite enactment flows from
16 the Eighth and Fourteenth Amendments, or that the identity of
17 such enactment can simply be obtained through discovery.
18 (Opposition, 17:18-25). Without more factual specificity,
19 Plaintiff's Fourth and Twelfth Causes of Action plainly fail to
20 state a viable claim.

21 22 **5. Intentional Infliction of Emotional Distress.**

23 In the Fifth Cause of Action, Plaintiff asserts a claim for
24 intentional infliction of emotional distress as to Salazar in her
25 representational capacity on his behalf. The cause of action
26 makes it clear that Plaintiff is not alleging that she was
27 personally subjected to the extreme and outrageous conduct that
28 is required to state a cause of action for infliction of such

1 distress. See, e.g., Marlene F. v. Affiliated Psychiatric
2 Medical Clinic, Inc., 48 Cal. 3d 583, 593-94 (1989).

3 Consequently, in assessing Plaintiff's claim, only conduct
4 directed expressly to Salazar need be considered.

5 Stripped to its essence, that conduct as to Salazar (at
6 least as currently stated in the SAC) amounts only to an
7 allegation that Salazar was wrongfully housed with Defendant
8 Christian, despite the fact that Salazar had asked to be moved to
9 another cell or a different institution. While the SAC states
10 generally that "Salazar also complained about Defendant
11 Christian's mistreatment towards him, including physical abuse
12 and mental abuse" (SAC, ¶ 26), no specifics as to the nature of
13 such abuse are identified. In addition, the remainder of
14 allegations made in the SAC pertain either to conduct not
15 directed specifically to Salazar (like failure to wear a personal
16 alarm) or conduct of which Salazar would necessarily have been
17 unaware (such as any delay in obtaining adequate medical care
18 after Salazar was presumably discovered unconscious, or any
19 alleged "cover-up) after Salazar's death). Those allegations
20 would not appear to relate to any conduct especially calculated
21 to cause Salazar serious mental distress.

22 Salazar's placement in a cell with Christian does not itself
23 rise to the level of extreme or outrageous conduct especially
24 calculated to cause severe emotional distress, as it must to
25 state a cause of action for intentional infliction of such
26 distress. See Christensen v. Superior Court, 54 Cal. 3d 868, 903
27 (1991); see also Ochoa v. Superior Court, 39 Cal. 3d 159, 165 n.
28 5 (1985). While the SAC states that Salazar "complained" about

1 abuse at the hands of Defendant Christian, it fails to indicate
2 to whom those complaints were directed, or the kind of abuse that
3 was inflicted.

4 The facts as pled in the SAC are simply insufficient in
5 identifying conduct rising to the level of outrageousness
6 required to sustain a cause of action for intentional infliction
7 of emotional distress. Defendants' Motion to Dismiss as to the
8 Fifth Cause of Action is hence granted.

10 **7. Wrongful Death**

11 The next argument posited by Defendants' Motion to Dismiss
12 concerns the Tenth Cause of Action, for Wrongful Death. The
13 State of California contends that Plaintiff cannot maintain a
14 wrongful death claim against the State on immunity grounds.

15 Under California Government Code § 844.6(a)(2), a public
16 entity is not liable for "[a]n injury to any prisoner." Because
17 injury is defined in the statutory structure as including death
18 (see Government Code § 810.8), wrongful death actions brought on
19 behalf of deceased prisoners like Salazar are generally precluded
20 by the immunity afforded by § 844.6(a)(2). Section 844.6(d),
21 however, provides an exception to that general rule by allowing
22 for a wrongful death action on a prisoner's behalf if the
23 prisoner death is allegedly caused by a dangerous condition of
24 public property. Garcia v. State of California, 247 Cal. App. 2d
25 814, 817 (1967); May v. County of Monterey, 139 Cal. App. 3d 717,
26 721 (1983). That exception is limited to dangerous condition
27 claims, and does not extend to acts of other prisoners or acts of
28 prison employees. Id.

1 Taking the allegations of the SAC as a whole, it appears
2 clear that Plaintiff alleges her son's death was either caused by
3 his cellmate, Defendant Christian, and/or the inaction of prison
4 employees in failing to protect Salazar and to obtain medical
5 care on a timely basis. Immunity applies to either of those
6 scenarios under both Garcia and May. Plaintiff nonetheless
7 attempts to argue, in opposition to this motion, that she comes
8 within the exception to the general rule of wrongful death
9 immunity because her claim "is also predicated upon a dangerous
10 condition of public property." (Opposition, 24:15-22). She
11 identifies the dangerous condition present here as "being housed
12 with a prisoner, whom the defendants knew had violent tendencies,
13 and with whom the decedent [Salazar] obviously did not get along
14 with." Id.

15 Plaintiff's argument lacks merit. The Garcia court states
16 unequivocally that "no liability is imposed upon a public entity
17 by reason of the death of a prisoner resulting from an act of the
18 prisoner himself, acts of other prisoners, acts of prison
19 employees, or acts or prison invitees, whether committed
20 negligently or wilfully." 247 Cal. App. 2d at 817. As indicated
21 above, this holding applies squarely to Plaintiff's allegations
22 here, and cannot be circumvented through argument that the
23 charges pertaining to Defendant Christian and to prison personnel
24 somehow also constitute a dangerous condition of public property.
25 Because no dangerous condition of public property has been
26 alleged, Plaintiff's Tenth Cause of Action fails as against
27 Defendant State of California.

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2 **6. Abuse of Process.**

3 Defendants finally assert that the Eleventh Cause of Action,
4 for Abuse of Process, cannot stand. An abuse of process claim,
5 by definition, requires that legal process be improperly used to
6 accomplish a purpose contrary to that for which the process was
7 designed. See Ion Equipment Corp. v. Nelson, 110 Cal. App. 3d
8 868, 875-76 (1980). Where a proceeding does not emanate from or
9 rest on the authority or jurisdiction of the court, there can be
10 no cause of action for abuse of process. Meadows v. Bakersfield
11 Sav. & Loan Ass'n, 250 Cal. App. 2d 749, 753 (1967). According
12 to Defendants, although Plaintiff alleges that an abuse of
13 process occurred "in covering up Salazar's death and ruling same
14 as a suicide" (SAC, ¶ 61), the SAC identifies no legal process or
15 proceeding that would support an abuse of process claim.

16 Plaintiff has not opposed Defendants' Motion to Dismiss as
17 to the Eleventh Cause of Action, and, because Defendants'
18 position appears correct, the abuse of process claim will be
19 dismissed.

20
21
22 **CONCLUSION**

23
24 Based on the foregoing, Defendants' Motion to Dismiss is
25 DENIED as the First Cause of Action, but GRANTED as to the
26 Second, Third, Fourth, Fifth, Eleventh and Twelfth Causes of

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1 Action.⁵ The Motion is also GRANTED as to Defendant State of
2 California, only, with respect to the Tenth Cause of Action.
3 Because it appears that some of the deficiencies of Plaintiffs'
4 complaint may yet be rectified through amendment, leave to amend
5 will be permitted one final time.

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7 IT IS SO ORDERED.

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9 DATED: November 16, 2005

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13 MORRISON C. ENGLAND, JR.
14 UNITED STATES DISTRICT JUDGE
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27 ⁵Because oral argument would not be of material assistance,
28 this matter was deemed suitable for decision without oral
argument. E.D. Local Rule 78-230(h).